THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No.1927 of 2005

Date of Decision: 13 -10- 2006

State of Punjab and another **.....Petitioners**

v.

Sadhu Singh Hamdard Trust and another **.....Respondents**

CORAM: HON'BLE MR.JUSTICE P.S.PATWALIA

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Present: Mr.G.C.Gupta, DAG, Punjab
for the petitioners.

Mr.M.L.Saggar, Advocate
for the respondents.

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P.S.PATWALIA, J. (Oral)

The present order will dispose of Civil Revision Nos.1927 and 1928 of 2005. In both these revision petitions, the learned Additional District Judge, Jalandhar has dismissed the first appeals filed by the State of Punjab on the ground that sufficient cause has not been shown by the State of Punjab for condonation of 282 days delay in both the appeals.

The explanation furnished by the State Government seeking condonation of delay has been noticed by the learned Additional District Judge in para 2 of the judgment which reads as hereunder:-

> "The instant appeal was filed after the expiry of limitation period and a separate application for condonation of delay under section 5 of the Limitation Act was also filed stating therein that the case of Sadhu Singh vs State of Punjab and others was instituted on

25.7.94 and decided on 20.10.2001 by the above said court. Copy of the judgment dated 20.10.2000 was procured by the District Attorney, Jalandhar on 7.3.2002 from the judicial copying agency. After receipt of the certified copy of judgment and the decree the same was processed and as per procedure it was sent to Director, Prosecution and litigation Punjab, Chandigarh with the plea that the case was not fit for filing the appeal. Director, Prosecution & litigation Punjab in turn appended his opinion and sent the judgment to secretary of the department and after red tape the same was received in the office of District Magistrate with the opinion that the case was not fit for filing appeal. It is further averred that the District Magistrate and other officers remained busy in municipal corporation and then in zila parishad and panchayat elections and there was heap of files pending for disposal and files of this case mixed up with other files. After the elections and other activities when the file was put up before the District Magistrate, the limitation for filing appeal had already expired. It is further averred that on perusal, the district magistrate found the case fit for filing appeal and he immediately activated the concerned branch to take step to file appeal against the judgment and decree. As such, the instruction which is a time concerning process, were obtained by hand from the Director, Prosecution & Litigation by the District Attorney by writing him through Secretary to Government, Punjab, Home Department. There after, the employees of D.C. Office went on indefinite strike which caused hindrance in the working of the office and all work became stand still. Time was also consumed for obtaining sanction etc. for payment of court fee. The delay in filing the appeal is neither deliberate nor intentional one but due to the unavoidable

circumstances as explained above which were beyond the control of the applicant/appellant. Consequently, prayer for acceptance of the application has thus, been made."

It has been settled by the Hon'ble Supreme Court in **State of Haryana v. Chandra Mani & Ors.**, JT 1996(3) S.C. 371 that while considering the claim of a litigant seeking condonation of delay, the approach should not be pedantic. When substantial justice and technical considerations are pitted against each other , cause of substantial justice should be preferred. It was further noticed that in so far as State is concerned, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology a certain further latitude is permissible while examining a claim for condonation of delay. After noticing a large number of judgments of the Hon'ble Supreme Court the Court held as hereunder:-

"11. It is notorious and common knowledge that delay in more than 60 per cent of the cases filed in this Court – be it by private party or the State – are barred by limitation and this Court generally adopts liberal approach in condonation of delay finding somewhat sufficient cause to decide the appeal on merits. It is equally common knowledge that litigants including the State are accorded the same treatment and the law is administered in an even-handed manner. When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table

to table and keeping it on table for considerable time causing delay – intentional or otherwise – is a routine. Considerable delay of procedural red tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what is the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the Governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The Court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-a-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts or whether cases require adjustment and should authorise the officers take a decision or give appropriate permission for settlement. In the event of decision to file appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy byway of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants.

Considered from this perspective, it must be held that the delay of 109 days in this case has been explained and that it is a fit case for condonation of delay."

Applying the ratio of law as laid down aforesaid, I am of the opinion that the lower Appellate Court should have condoned the delay in the present cases. A reading of the explanation given by the State, extracted hereinabove, would show that the delay has occurred on account of the fact that the matter remained pending before one authority or another. The cause of substantial justice should not be permitted to be frustrated by refusing to condone the delay.

The present revision petitions are therefore allowed. The orders passed by the learned Additional District Judge, Jalandhar dismissing the applications filed for condonation of delay and consequently the first appeals are set aside. The applications seeking condonation of delay are allowed. The first appeals will now be heard on merits.

(P.S.PATWALIA)
JUDGE

October 13, 2006.

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